

shall mail a copy of the notice to the Commission no later than two days after mailing of notice to members. Cooperatives that are voting shall also submit the original executed ballot in a separate envelope marked "Referendum Ballot," or as otherwise provided in the referendum procedure pursuant to §1371.3.

(e) If the ballot submitted to the Commission by a qualified cooperative differs in any significant way from the notice of its ballot sent to member producers, then the Commission may take appropriate remedial action.

(f) A producer who is a member of a cooperative that has provided notice of its intent to cast a block vote to approve or not to approve a proposed order or not to cast a block vote and who by ballot expresses his approval or disapproval of the proposed order, shall notify the Compact Commission as to the name of the cooperative of which he or she is a member, and the Commission shall remove such producer's name from the list certified by such cooperative with its corporate vote. If the producer lists the name of a cooperative that is different from the cooperative identified by the ballot number, as determined by the representative period for the referendum, the latter will control.

## **PART 1381—RULES OF PRACTICE GOVERNING PROCEEDINGS ON PETITIONS TO MODIFY OR TO BE EXEMPTED FROM COMPACT OVER-ORDER PRICE REGULATIONS**

Sec.

- 1381.1 Definitions.
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AUTHORITY: U.S.C. 7256.

SOURCE: 62 FR 35065, June 30, 1997, unless otherwise noted.

### **§ 1381.1 Definitions.**

As used in this part, the terms defined in Article II, section 2 of the Compact shall apply with equal force and effect. In addition, unless the context otherwise requires:

(a) *Administrative assessment* shall include the assessment imposed upon Handlers under 7 CFR 1308.1 for their pro rata share of the expense of administering a Compact pricing regulation, as announced each month by the Federal Order #1 Market Administrator and authorized under 7 U.S.C. 7256.

(b) *Chair* shall mean the Chair of the Northeast Dairy Compact Commission.

(c) *Handler* shall mean any person subject to a Compact Over-order price regulation or administrative assessment, or to whom a Compact Over-order price or administrative assessment is sought to be made applicable.

(d) *Compact Over-order price regulation* shall mean the prices regulated under the provisions of 7 CFR parts 1300, 1301, 1303-1307, as announced each month by the Federal Order #1 Market Administrator and authorized under 7 U.S.C. 7256.

(e) *Order* shall include a Compact Over-order price regulation.

### **§ 1381.2 Institution of proceedings.**

Any handler desiring to complain that any order, Compact over-order price, or administrative assessment, or any provision of such order or assessment, or any obligation imposed in connection therewith is not in accordance with law shall file with the Commission a petition in writing, along with 5 copies of the same.

### **§ 1381.3 Contents of petition.**

A petition shall contain:

(a) The correct name, address, and principal place of business of the petitioner. If petitioner is a corporation, such fact shall be stated, together with the name of the State of incorporation, the date of incorporation, and the names, addresses, and respective positions, held by its officers; if an unincorporated association, the names and addresses of its officers, and the respective positions held by them; if a partnership, the name and address of each partner.

(b) Reference to the specific terms or provisions of the regulation, order, or notice of administrative assessment, or the interpretation or application thereof, which are complained of.

(c) A full statement of the facts (avoiding a mere repetition of detailed

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evidence) upon which the petition is based, setting forth clearly and concisely the nature of the petitioner's business and the manner in which petitioner claims to be affected by the terms or provisions of the regulation, order or administrative assessment, or the interpretation or applications thereof, which are complained of.

(d) A statement of the grounds on which the terms or provisions of the regulation, order, or administrative assessment or the interpretation or application thereof, which are complained of are challenged as not being in accordance with law.

(e) Any prayer for specific relief which the petitioner desires the Commission to grant;

(f) An affidavit by the petitioner, or if the petitioner, or if the petitioner is not an individual by an officer of the petitioner having knowledge of the facts stated in the petition, verifying the petition and stating that it is filed in good faith and not for the purposes of the delay. The affidavit may include a request for an oral hearing on the petition. Such request shall set forth specific grounds demonstrating the need for such a hearing.

(g) Any additional affidavit evidence supporting the petition.

(h) Petitioner's prayer for relief may include a request that payments due or payable during the pendency of the administrative appeal or longer pursuant to § 1381.5(b), be placed in an escrow account established by the Commission. If a request for escrow is made, petitioner may make payment into a Commission established escrow account while the Commission rules upon petitioner's request in accordance with § 1381.4(b)(5). Any petitioner who refuses to make payment during this period shall be liable for payment of interest on such withheld funds, at the federal statutory rate set forth in 28 U.S.C 1961, plus such additional penalties as are appropriate under Article VI, Section 17 of the Compact.

[62 FR 35065, June 30, 1997; 62 FR 36651, July 9, 1997]

### § 1381.4 Conduct of proceedings.

(a) *Appointment of hearing panel.* Upon receipt of a petition, and as determined appropriate by the Commission's Com-

mittee on Administration, the Chair shall appoint a hearing panel of either one to three Commission members, who are not members of the state delegation in which the Handler is incorporated or has its principal place of business, who have no pecuniary interest in the outcome, and who are otherwise fair and impartial, or an independent hearing officer. The hearing panel shall consider the petition. For hearing panels of Commission members greater than one member, the Chair shall designate a chief hearing officer.

(b) *Preliminary matters.* The panel shall meet within 15 days of their appointment to determine whether to:

(1) Limit the taking of evidence to affidavits, and thereby make their decision solely on the basis of the record before them without an oral hearing. In making this determination, the panel shall consider:

(i) The nature of the petition before them;

(ii) The nature of any facts in dispute that may necessitate an oral hearing; and

(iii) Whether the petitioner will be unduly prejudiced by limiting the taking of evidence to affidavits without benefit of an oral hearing.

(2) Require the production by affidavit or additional information, documents, reports, answers, records, accounts, papers or other data and documentary evidence necessary to the proper resolution of the matter.

(3) Compel the production of documentary evidence by subpoena throughout all signatory states pursuant to section 16(a) of the Compact.

(4) Consolidate two or more petitions pertaining to the same order or issue and the evidence relied upon under such consolidated proceeding may be embodied in a single decision.

(5) Grant or deny petitioner's request for the establishment of an escrow account, if such request has been made. The panel shall deny such a request only if it has otherwise ensured adequate protection to the handler with respect to the payments of sums due and challenged in the petition.

(c) The panel shall promptly notify petitioner by certified mail of the results of its deliberations under paragraphs (a) and (b) of this section. The